



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/167030

PRELIMINARY RECITALS

Pursuant to a petition filed July 01, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 10, 2015, at Appleton, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$1,844.00 in FoodShare (FS) benefits for the period of August 1, 2014 through January 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Luisa McCay

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Outagamie County. The petitioner's household size is 4.
2. In July 2014 the petitioner completed a renewal of her FoodShare (FS) benefits.

3. Following the renewal on July 8, 2014 the agency sent the petitioner a notice. The notice stated that the petitioner's FS benefits were not changing. Prior to the renewal the petitioner was receiving \$498.00 in FS benefits. That benefit amount continued. The notice further advised that if the petitioner's household income before taxes increased above \$1,987.50, she had to report the increase in income to the agency.
4. The petitioner monthly household income between July 2014 and January 2015 was as follows:
 - a. July 2014 – \$2,000
 - b. August 2014 - \$2,151.02
 - c. September 2014 - \$2,039.99
 - d. October 2014 - \$3,064.75
 - e. November 2014 - \$2,025.81
 - f. December 2014 - \$4,160.50
 - g. January 2015 - \$1,994.43
5. Between July 2014 and January 2015 the petitioner never reported an increase in income to the agency.
6. The petitioner was issued the following FS benefits between July 2014 and January 2015:
 - a. July 2014 - \$498
 - b. August 2014 - \$498
 - c. September 2014 – \$520
 - d. October 2014 – \$520
 - e. November 2014 – \$520
 - f. December 2014 – \$520
 - g. January 2015 – \$520
7. Between July 2014 and January 2015 the petitioner's monthly rent or shelter cost was \$666.45. The family was responsible for the utilities including the heating expenses.
8. On May 26, 2015 the agency sent the petitioner a notice stating that she was overpaid \$1,844.00 in FoodShare (FS) benefits for the period of August 1, 2014 through January 31, 2015.
9. On June 30, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

The Federal regulations requires States to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). *7 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSWH)*, § 7.3.2. Overpayments due to "client error" may be recovered for up to six years after discovery. *FSWH*, § 7.3.2.1. Overpayments due to "agency error" may only be recovered for up to 12 months from the date of discovery. *Id.* The date of discovery is the date that the agency became aware of the potential overissuance. *Id.* This is synonymous with the date of awareness. *Id.*

The FS rules and regulations require a household to report by the 10th of the following month that the household's income increases above 130% of the Federal Poverty Limit (FPL). *FSWH* § 6.1.1.2. For a

family of 4 130% of the FPL was \$2,584. *FSWH* § 8.1.1. Reported changes go into effect the month following the report. See *FSWH* § 6.1.3.3, 6.1.3.6.

In this case the petitioner's household income was accurately reported at the renewal in July 2014. Despite the notice stating that the household had to report if their household income increased above \$1,987.50, which is 100% of the FPL, the FS reporting requirements did not require the household to report until their gross income exceeded \$2,584 or 130% of the FPL. The household income exceeded this amount in October 2014. They had until the 10th of the following month, which was November 2014, to report the increase. Changes reported in November would have been effective in December. Thus, there is an overpayment for the months of December 2014 and January 2014.

In order to determine the amount of the overpayment for December 2014 and January 2015 I must determine the amount of FS benefits the petitioner was entitled to for those months. In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires the county to start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 4 is \$163, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

I have reviewed the agency's calculations with respect to the petitioner's FS benefits for December 2014 and January 2015. Given the household's size, gross income, shelter costs, and allowed deductions, the household should have received \$211 in monthly FS benefits for December 2014 and January 2015. The household was issued \$520 in monthly FS benefits for each of those months. Thus, the household was overpaid \$309 in FS benefits each month for a total FS overpayment of \$618.

The petitioner's wife testified that she immediately reported her increase in income. She testified that she was on leave and just returning to work when she completed the renewal. She provided paystubs that were lower given that she was just returning to work. When her paystubs increased, she testified that she dropped off these new paystubs to the agency.

I do not find this testimony credible. The case comments do not reflect this sequence of events. She could not provide any documentary evidence to support her testimony. Although she had date stamped items from the renewal items she dropped off at the agency, she did not have date stamped copies of these later paystubs. She could not state the specific date she dropped off the more recent paystubs. This testimony is self-serving after the agency establishes an overpayment. Nonetheless, the agency still incorrectly established the large majority of this FS overpayment for the reasons stated above.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was overpaid \$1,844.00 in FoodShare (FS) benefits for the period of August 1, 2014 through January 31, 2015.

THEREFORE, it is

ORDERED

That this case is remanded to the agency. The agency shall issue a new FS overpayment notice for December 1, 2014 – January 31, 2015 in the amount of \$618. The agency shall rescind this overpayment notice for under claim number [REDACTED]. This appeal is dismissed in all other respects. The agency shall comply with this order within 10 days from the date of decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of September, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 17, 2015.

Outagamie County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability